By analogy to the well settled rule that lack of knowledge of nonage is no defence, the dissenting judges were of opinion that the defendant's ignorance of the woman's mental condition was immaterial. A statutory definition of rape may make it necessary for the man to ascertain at his peril whether the woman is legally and mentally capable of giving consent. *People v. Griffin* (1897) 117 Cal. 583. And it is generally held without statute that if the woman is so idiotic as to be utterly incapable of expressing either assent or dissent, the crime is rape. *Reg. v. Fletcher* (1859) 8 Cox C. C. 131; *Reg. v. Barratt* (1873) 12 Cox C. C. 498; *Gore v. State* (1903) 119 Ga. 418. The degree of intelligence necessary to give consent may exist with an impaired and feeble intellect. *McQuirk v. State* (1887) 84 Ala. 435; *Adams v. State* (1911) 115 Pac. (Okl.) 347; *Morrow v. State* (1913) 13 Ga. App. 159. If the woman, though mentally diseased, yields from mere animal desire, it has been held not to be rape. *Reg. v. Charles Fletcher* (1866) 10 Cox C. C. 248; *Reg. v. Connolly* (1867) 26 U. C. Q. B. 317 (*semble*); *Baldwin v. State* (1883) 15 Tex. Ct. App. 275 (*semble*). Where the insanity is so marked as to be palpable, lack of knowledge of the woman's condition can be no defence. *State v. Tarr* (1869) 28 Ia. 397. If A aids B and C to commit a rape upon a woman whom A knows to be mentally incapable of consenting, it is immaterial whether B and C know her condition or not. *Caruth v. State* (1894) 25 S. W. (Tex.) 778. In putting the burden upon the state to prove both the mental incapacity of the apparently consenting woman and the defendant's knowledge of the fact, the principal case follows three earlier cases in the same jurisdiction. *State v. Cunningham* (1889) 100 Mo. 382; *State v. Warren* (1911) 232 Mo. 185; *State v. Schlichter* (1915) 262 Mo. 561. Cf. *Beaven v. Commonwealth* (1895) 17 Ky. L. Rep. 246.

G. E. W.

EVIDENCE—LOST ACCOUNT BOOKS—PROOF OF CONTENTS.—PERLEY v. MCGRAY (1916) 99 ATL. (ME.) 39.—The plaintiff's original books of account had been destroyed by fire. A so-called "ledger" which a witness testified to contain a true copy of all balances on the plaintiff's books was introduced in evidence to prove the balance due on account from the defendant. *Held,* that the ledger was admissible.

The general rule is that a book of accounts is admissible in evidence only when it is a book of original entry. *Frick v. Kabaku* (1902) 116 Ia. 494; *Kerns v. Dean* (1888) 77 Cal. 555; Chamberlayne, *Modern Law of Evidence,* sec. 3085. The first permanent record generally constitutes the original entry. *Kansas v. Stephenson* (1904) 69 Kan. 405. Accordingly, if the entries are made in a day book and then transferred to a ledger, the entries in the ledger are not considered original entries and are not competent. *Woodbury v. Woodbury* (1876) 50 Vt. 152. But the fact that such entries were made temporarily on rough pieces of paper or on a slate and then transferred to a book does not destroy the character of the book as one of original entries. *Taylor v. Davis* (1892) 82 Wis. 455; *Hall v. Glidden* (1855) 39 Me. 445. An exception is made to the general rule where the original books have been lost or destroyed. The rule allowing secondary evidence of the contents of the entries is

then applicable and copies of the original which are sworn to as true are admissible. *Hodnett v. Gault* (1901) 64 App. Div. (N. Y.) 163; *Hancock v. Hintrager* (1882) 60 Ia. 374. Thus a ledger like any other copy of original entries becomes competent evidence when the loss or innocent destruction of the book of original entry is established and a general balance may be introduced without introducing the separate items. *Rigby v. Logan* (1895) 45 S. C. 651. If the absence of the original is unaccounted for, or no explanation is given of its destruction, the copy is inadmissible. *Rouss v. McDowell* (1895) 88 Hun, 532; *Palmer v. Goldsmith* (1884) 15 Ill. App. 544. In admitting a copy much rests in the discretion of the trial judge. *Stephan v. Metzger* (1902) 95 Mo. App. 609. The principal case is in accord with the prevailing rule and in harmony with modern business methods.

S. J. T.

MASTER AND SERVANT—NEGLIGENCE—LIABILITY OF FATHER FOR SON'S NEGLIGENCE IN OPERATING PLEASURE CAR.—VAN BLARICOM V. DODGSON (1917) 8 DAILY RECORD (N. Y.) 56.—The defendant kept a motor car for pleasure purposes and convenience of his family. His adult son while operating the car with his father's permission, for his own pleasure and convenience, negligently drove over the plaintiff's intestate and killed him. *Held,* that the defendant was not liable for the negligence of his son as there was no agency established.

For a discussion of the principles involved in this case, see (1917) 26 YALE LAW JOURNAL, 327.

S. J. T.

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACT—INJURY ARISING OUT OF EMPLOYMENT.—WALTHER V. AMERICAN PAPER CO. (1916) 99 ATL. (N. J.) 263.—A night watchman in a mill, while making his rounds, was struck over the head and killed by an employee of the same company who had entered the mill and hid himself without any intent to rob the office of the mill or to do any other mischief or crime except to rob the deceased. *Held,* that the deceased was not killed from an accident arising out of his employment under Workmen's Compensation Act (P. L. 1911, p. 134). Minturn and Kalisch, JJ., *dissenting.*

The language of the New Jersey act of 1911 is identical with the language of the English act of 1906 in that to warrant a recovery an employee must be injured by "accident arising out of and in the course of his employment." *Bryant v. Fissell* (1913) 84 N. J. L. 72. The terms "out of" and "in the course of" are not synonymous. *State ex rel. Duluth Brewing, etc., Co. v. District Ct.* (1915) 129 Minn. 176. If either of these elements is missing, there can be no recovery. *McNicol's Case* (1913) 215 Mass. 497. It has been said that under the New Jersey act an accident which is the result of a risk reasonably incident to the employment is an accident arising out of the employment. *Hulley v. Moosbrugger* (1915) 88 N. J. L. 161. But it is not necessary that it should be one reasonably to be anticipated as an incident to the employment. *Sponatski's Case* (1915) 220 Mass. 526. Ordinarily, assault by third persons cannot be considered as incidental to the employment, but